

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 ***

5
6
7 HOME GAMBLING NETWORK, INC., *et al.*,

2:05-cv-00610-DAE-VCF

8 Plaintiffs,

ORDER

9 vs.

10 CHRIS PICHE, *et al.*,

11 Defendants.
12

13 Before the court is Defendants' Motion to Compel Compliance with Court's Protective Order
14 (#233)(#349). Plaintiffs filed a response (#354), and Defendants filed a reply (#355).

15 On September 30, 2013, The Honorable David A. Ezra, District Judge, entered an Order (#333)
16 granting Defendants' Motion for Summary Judgment (#312) and denying Plaintiffs' Motion to Defer
17 Defendants' Motion for Summary Judgment (#323). Judgment was entered accordingly in favor of
18 defendants on that same day (#334). On October 30, 2013, Plaintiffs filed a notice of appeal from the
19 Judgment (#342).

20 Defendants now seek enforcement of paragraph 4 of the Protective Order for CWC Defendants'
21 Database (#233) entered by the Honorable Lawrence R. Leavitt, Magistrate Judge. That paragraph
22 requires:

23
24 4. All copies of the Database, and reports and information generated from the Database,
25 shall be returned with the originally produced Database to defendants' counsel, within
thirty (30) days, after Judgment in this action is entered. If any of the information or
reports gathered or generated from the Database were stored electronically, that
information and those reports shall be deleted irrecoverably from the electronic storage

1 device, and an affidavit from the person who deletes the information and an affidavit of
2 plaintiffs' counsel regarding the sufficiency of the deletion shall also be served on
defendants' counsel within thirty (30) days after Judgment in this action is entered.

3 In effect, Plaintiff's response to defendant's motion requests a stay of the enforcement of this
4 paragraph. Plaintiff argues, "The return of the evidence subject to the Court's protective order can abide
5 the appeal, and once the case *finally* concludes, the information will be returned." (#354, p. 2 of 13,
6 lines 7-9. Emphasis original.)

7 Although an appeal has been filed, this court retains jurisdiction during the pendency of that
8 appeal to act to preserve the status quo. *Small v. Operative Plasterers' and Cement Masons'*
9 *International Ass'n Local 200, AFL-CIO*, 610 F.3d 483 (9th Cir. 2010). The Protective Order at issue
10 (#233) is not implicated in the appeal and this court has inherent power to modify the Protective Order
11 to continue the status quo until the dispute has been finally resolved. 11 Charles Alan Wright, Arthur R.
12 Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2904 (3d ed. 2012).

13 The court will consider the following factors: (1) whether the stay applicant has made a strong
14 showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured
15 by enforcement of paragraph 4; (3) whether staying enforcement of paragraph 4 will substantially injure
16 the other parties interested in the proceeding; and (4) where the public interest lies.

17 While likelihood of success on the merits appears problematic, all three other factors weigh in
18 favor of a stay. There is no evidence that in the years that have elapsed since the information at issue
19 was produced that plaintiffs have done anything to violate the protective order. Therefore, delaying
20 compliance with paragraph 4 will not substantially injure defendants or any other parties interested in
21 this case. Plaintiff would be irreparably harmed if they gave up custody of the evidence at issue
22 together with their work product and then the appellate court's ruling vacated the current judgment of
23 this court. The public interest is served by preserving the opportunity of a fair trial, should the matter be
24 reversed and remanded.
25

